

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: )  
 ) [AWG]  
Karen L. Whitmire ) Docket No. **13-0103**  
 )  
Petitioner ) **Decision and Order**

Appearances:

none, for Karen L. Whitmire, the Petitioner; and

Michelle Tanner, Appeals Coordinator, United States Department of Agriculture, Rural Development, Centralized Servicing Center, St. Louis, Missouri, for the Respondent (USDA Rural Development).

1. The hearing by telephone was held as scheduled on February 5, 2013. Karen L. Whitmire, full name Karen Lee Whitmire, the Petitioner (“Petitioner Whitmire”), did not participate. [Petitioner Whitmire had **no notice** of the hearing; the Hearing Notice mailed to her on December 14, 2012 was returned by the U.S. Postal Service marked:

“MOVED LEFT NO ADDRESS  
UNABLE TO FORWARD  
RETURN TO SENDER”]

2. Rural Development, an agency of the United States Department of Agriculture (USDA), the Respondent (“USDA Rural Development”), participated, represented by Michelle Tanner.

Summary of the Facts Presented

3. Petitioner Whitmire’s Hearing Request, a letter over the signature of D. Ken Whitener, Certified Public Accountant, dated October 2, 2012; date-stamped November 7, 2012; is admitted into evidence, together with the accompanying court documents from the mortgage foreclosure action that he forwarded.

4. USDA Rural Development's Exhibits RX 1 through RX 10, plus Narrative, Witness & Exhibit List, were filed on January 7, 2013, and are admitted into evidence, together with the testimony of Michelle Tanner.
5. Petitioner Whitmire bought a home in South Carolina in 2008, borrowing \$92,820.00 to pay for it. RX 2. Petitioner Whitmire borrowed from JP Morgan Chase Bank, N.A. JP Morgan Chase Bank, N.A. is the parent company of Chase Home Finance LLC (the Servicing Lender). Frequently I refer to these entities as Chase, or the lender.
6. USDA Rural Development's position is that Petitioner Whitmire owes to USDA Rural Development **\$36,960.11** (as of December 18, 2012) (*see* RX 10, p. 3), in repayment of the United States Department of Agriculture / Rural Development / Rural Housing Service **Guarantee** (*see* RX 1, esp. p. 2) for the loan made in 2008 ("the debt").
7. Potential Treasury collection fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$36,960.11** would increase the current balance by \$10,348.83, to \$47,308.94. *See* RX 10, p. 3.
8. Petitioner Whitmire's position is that Petitioner Whitmire owes **nothing** to USDA Rural Development and is **due a refund** for amounts taken from her, because there is no valid debt. [Garnishment of Petitioner Whitmire's wages began in 2012; federal monies due to Petitioner Whitmire (\$72.66) were also intercepted (**offset**). *See* RX 10, pp. 1-2.]
9. USDA Rural Development did pay a loss claim on the requested loan to the lender, \$39,898.29, on January 20, 2011. RX 6, p. 7. This, the amount USDA Rural Development paid, is the amount USDA Rural Development seeks to recover from Petitioner Whitmire under the **Guarantee** (less the amounts already collected from Petitioner Whitmire, through garnishment and **offset**). *See* RX 10, especially pp. 1-2.
10. The **Guarantee** (RX 1) establishes an **independent** obligation of Petitioner Whitmire "I certify and acknowledge that if the Agency pays a loss claim on the requested loan to the lender, I will reimburse the Agency for that amount. If I do not, the Agency will use all remedies available to it, including those under the Debt Collection Improvement Act, to recover on the Federal debt directly from me. The Agency's right to collect is independent of the lender's right to collect under the guaranteed note and will not be affected by any release by the lender of my obligation to repay the loan. Any Agency collection under this paragraph will not be shared with the lender." RX 1, p. 2.
11. Chase did not need to look to Petitioner Whitmire to pay the deficiency because it had the **Guarantee**. Chase looked to USDA Rural Development to be made whole under the **Guarantee**, and its claim was paid, \$39,898.29, on January 20, 2011. RX 6, p. 7.

12. This case involves an *administrative* collection action brought by an agency of the United States government, USDA Rural Development. The rules that apply here, concerning a **Guarantee** by which Petitioner Whitmire promised to reimburse USDA Rural Development if it (“the Agency”) paid a loss claim to Chase, are different from the rules that would have applied in South Carolina courts if Chase had sought to collect a deficiency. *Administrative* collections such as this do not require a valid judgment to support garnishment or *offset*.

13. USDA Rural Development is authorized to collect from Petitioner Whitmire as it has been doing here, administratively, pursuant to the **Guarantee**. This is in part because of the independent nature of the **Guarantee**; and in part because an agency of the United States government collecting administratively has rules that differ from those of the various jurisdictions in which the loans were made. USDA Rural Development did pay a loss claim on the requested loan to the lender: USDA Rural Development reimbursed the lender Chase \$39,898.29, on January 20, 2011. RX 6, p. 7. That amount, \$39,898.29, is what USDA Rural Development seeks to recover from Petitioner Whitmire under the **Guarantee**.

14. Here, though, I am troubled by the language in the court documents from the mortgage foreclosure action. Petitioner Whitmire, through her accountant, D. Ken Whitener, CPA, proved that Chase Home Finance, LLC, in court filings, **waived** the deficiency. The title of the Amended Complaint reads:

AMENDED  
COMPLAINT  
Foreclosure - Non-Jury  
(Deficiency waived)

15. Paragraph 14 of the Amended Complaint reads:

“The Plaintiff [Chase Home Finance, LLC] demands no personal or deficiency judgment and any right to the same is specifically **waived**.”  
(emphasis added)

16. While USDA Rural Development does not need a judgment in order to collect the loss claim, the **waived** language so dominates the Amended Complaint that further explanation was necessary to keep Petitioner Whitmire from being misled - - language to alert Petitioner Whitmire that she would be liable to repay the loss claim that would result if the sale of the property failed to pay the total debt plus attorneys’ fees and other fees and costs.

17. Ironically, the Amended Complaint did mention that the loan “is guaranteed by the Rural Housing Service of the United States Department of Agriculture”, in paragraph 3, but not to counteract the “Deficiency waived” language and not to warn Petitioner Whitmire that she remains liable to pay any shortfall. Rather, the language was used to explain that Petitioner Whitmire was denied an opportunity for modification under the Home Affordable Modification Program (HAMP). That language, too, is misleading; the lender could have given Petitioner Whitmire an opportunity for HAMP modification, by communicating with USDA.

18. I do not agree with Petitioner Whitmire’s Accountant’s assertion that the loan was canceled by the Order dated February 15, 2010; rather, the terms of the Order are quite clear that the mortgage lien is canceled. Nevertheless, I find that Chase’s misleading language in the mortgage foreclosure action makes the *Guarantee* not enforceable.

19. I find that, instead of benefitting from the *Guarantee*, as it easily could have, Chase Home Finance, LLC failed to protect the Government’s interest during foreclosure and thereby rendered the loan note *Guarantee* unenforceable. I find that because of the actions of the lender Chase Home Finance, LLC during foreclosure, *waiving* the deficiency, instead of maximizing recovery, Chase Home Finance, LLC prevented USDA Rural Development from collecting from Petitioner Whitmire. *See also* 7 C.F.R. § 1980.301, *et seq.*, especially 7 C.F.R. § 1980.308 and 7 C.F.R. § 1980.374.

20. Similarly, Chase Home Finance, LLC *waived* the deficiency in a case involving a *Guarantee* on a loan for a home in South Carolina in *In re Ronald Haynes*. In that case, my colleague, Judge Janice K. Bullard, found that USDA Rural Development had failed to establish the existence of a valid debt.

*See* [http://www.dm.usda.gov/oaljdecisions/120516\\_12-0272\\_DO\\_RonaldHaynes.pdf](http://www.dm.usda.gov/oaljdecisions/120516_12-0272_DO_RonaldHaynes.pdf)

#### Findings, Analysis and Conclusions

21. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Whitmire and USDA Rural Development; and over the subject matter (administrative wage garnishment, which requires determining whether Petitioner Whitmire owes a valid debt to USDA Rural Development).

22. Chase Home Finance, LLC misled Petitioner Whitmire in the mortgage foreclosure action: (a) the Deficiency *waived* language dominated the Amended Complaint; and (b) the Amended Complaint included no explanation to alert Petitioner Whitmire that she would be liable to reimburse any loss claim paid, because the loan was guaranteed by the Rural Housing Service of the United States Department of Agriculture.

23. In general, USDA Rural Development may collect administratively pursuant to a **Guarantee**, even where NO judgment has been entered against a borrower and NO personal deficiency has been established.

24. Here, however, the lender Chase, by misleading Petitioner Whitmire in the mortgage foreclosure action, prevented USDA Rural Development from collecting reimbursement from Petitioner Whitmire on the \$39,898.29 loss claim USDA Rural Development paid the lender Chase.

25. Here, the lender Chase has prevented collection, even administratively. In my opinion, Chase Home Finance, LLC, having done so, should not have been paid \$39,898.29, or anything, on its loss claim (RX 6, p. 7), and USDA Rural Development would do well to reclaim its money.

26. There is **no valid debt** owed by Petitioner Whitmire to USDA Rural Development.

27. Garnishment is **not** authorized. **Offset** of Petitioner Whitmire's **income tax refunds** or other **Federal monies** payable to the order of Ms. Whitmire is **not** authorized.

28. Any amounts collected from Petitioner Whitmire, including collections from Treasury (**offset** plus garnishment), **shall be returned to Petitioner Whitmire**.

#### Order

29. USDA Rural Development shall cancel the debt as to Petitioner Whitmire.

30. USDA Rural Development, and those collecting on its behalf, shall **return to Petitioner Whitmire** any amounts already collected through garnishment or **offset**.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties, with a courtesy **copy sent to Petitioner Whitmire's Accountant** at the address shown below.

Done at Washington, D.C.  
this 6<sup>th</sup> day of February 2013

s/ Jill S. Clifton

Jill S. Clifton  
Administrative Law Judge

D. Ken Whitener, CPA  
Suite 201  
135 Old Greenville Hwy  
Clemson SC 29631

864-654-8999 phone  
864-654-8315 FAX

Michelle Tanner, Appeals Coordinator  
USDA / RD Centralized Servicing Center  
Bldg 105 E, FC-244  
4300 Goodfellow Blvd  
St Louis MO 63120-1703  
[michelle.tanner@stl.usda.gov](mailto:michelle.tanner@stl.usda.gov)

314-457-5775 phone  
314-457-4547 FAX

Hearing Clerk's Office  
U.S. Department of Agriculture  
South Building Room 1031  
1400 Independence Avenue, SW  
Washington DC 20250-9203  
202-720-4443  
Fax: 202-720-9776